decision it was held that an express company undertaking to carry merchandise C. O. D. may nevertheless refuse to carry liquor in that way. *Burk* v. *Platt*, 172 Fed. 777 (Circ. Ct., N. D., W. Va.). This, however, does not conflict with the general American doctrine. A common carrier has a common-law right to insist on prepayment of charges; and it makes no difference that he extends credit to certain shippers.[15] It might be argued that express companies in professing to carry all merchandise C. O. D. have waived their common-law right. But public policy hardly justifies the imposition of this additional burden, and it is safe to say that a carrier may discriminate, as to C. O. D. shipments, not only between commodities but also between persons.

CREATION OF JOINT TENANCIES. — In joint tenancy each co-owner is possessed of the whole subject to the others' interests; tenants in common hold distinct, although undivided, parts. The great practical difference between the two forms of collective ownership is that on the death of a joint tenant the survivors hold the *res* free of the interest of the deceased; while on the death of a tenant in common the property passes to his representatives just as would any other property. Of these forms, tenancy in common is the more in accord with ancient custom. And it seems not unlikely that down to the time of Bracton [1] a conveyance to several, in the absence of special facts, created a tenancy in common. Such an interest in real property imposed upon each tenant the incidents of tenure as to his share; and the courts came to feel that in construing limitations as tenancies in common they were not benefiting the holders of the property.[2] The general rule in favor of such construction accordingly fell; and as it was at first replaced by no other, the judges for a time probably applied no definite principle to the cases as they arose.[3] But when Littleton wrote, the new general rule had developed, that a conveyance to two or more created a joint tenancy unless the instrument itself showed an intent that the enjoyment be several.[4]

The substantial disappearance of the incidents of tenure took from joint tenancy its claim to the favor of the judges. And although the rule of Littleton held its own alike for real and personal estates and for choses in action, the courts became increasingly liberal in finding words of severance.[5] This liberality was somewhat more marked in equity than at law,[6] and perhaps also more marked, both at law and in equity, as to convey-

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[15] Danciger *v.* Wells Fargo, 154 Fed. 379; Southern Indiana Express Co. *v.* U. S. Express Co., 92 Fed. 1022.

[1] Lib. 5, 375 a.

[2] 2 Bl. Comm. 193.

[3] Fleta's apparent inconsistency with himself (lib. 3, cap. 4, § 2, and lib. 3, cap. 4, § 7) and with Britton (Bk. I, Ch. IV, 6) is probably to be explained on the theory that at the end of the thirteenth century the law on the point was unsettled. See discussions of these early authorities in Wythe (Va.) 377 n. (58) and in 13 Sol. J. 885.

[4] Co. Litt. § 283.

[5] In the notes to Morley *v.* Bird, 3 Ves. 628, in Tudor, Lead. Cas. in Real Prop., 4 ed., 271–277, and 281–286, is an exhaustive discussion of the effect of particular phrases in creating joint tenancies and tenancies in common.

[6] Fleming *v.* Fleming, 5 Ir. Ch. 129.

ances by use[7] or devise[8] than as to conveyances by the common-law methods. Sporadic *dicta* raised[9] and left unsettled[10] the problem of the effect of a conveyance to A and B, "their executors, administrators and assigns." In a recent decision this form of words is held to be indistinguishable from a transference to A and B without more, and accordingly to create a joint tenancy. *Goddard* v. *Lewis*, 25 T. L. R. 813 (Eng., K. B. D., July 31, 1909). The result is admittedly unfortunate: that the purchasers of the term did not contemplate a right to the whole in the survivor is undoubted. And to attain its conclusion the court is driven to regard the naming of the personal representative as for all purposes surplusage.[11] But it is true that the purpose of naming the executors was the limitation of the estate granted, and not the determination of the type of collective interest created; so that the doctrine of a technical decision reduces itself to a highly technical rule, that words of severance must profess to be such.

It is probable that nowhere in this country, at least as to interests in land, would the decision in the principal case have been reached. In one or two jurisdictions the courts without legislative aid have either limited[12] or denied[13] the English presumption in favor of joint tenancies; and in Connecticut, which accepted the presumption, the right of survivorship has been rejected.[14] For the most part, however, the courts of this country have followed the English decisions.[15] But legislation has now everywhere either reversed the English presumption,[16] or abolished the right of survivorship,[17] or altogether done away with joint tenancies.[18]

EFFECT OF REVOCATION OF PROBATE UPON RIGHTS OF LEGATEES. — A legatee's title to specific property bequeathed to him is said to relate back, upon the assent of the executor, and to vest in him as of the time of the testator's death.[1] If, then, after final settlement of the estate, a codicil is discovered and admitted to probate, revoking a legacy of certain shares of stock to A and bequeathing them to B, the title vested in B by the executor's assent covers, by relation back, the entire period during which the shares have been held by A. Since A has thus received what rightfully

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[7] Rigden *v.* Vallier, 2 Ves. 252.

[8] Fisher *v.* Wigg, 1 P. Wms. 14.

[9] Crooke *v.* De Bandes, 9 Ves. Jr. 197, 204; Jackson *v.* Jackson, 9 Ves. Jr. 591, 595.

[10] As reported in Moseley, 184, Cray *v.* Willis is a square decision for holding a joint tenancy on these facts; but in the report in 2 P. Wms. 529, the crucial words "and executors" do not appear.

[11] *Cf.* on this point the ingenious article in 3 Law Stud. Mag. (N. S.) 324 anticipating the facts of this case and contending for a result opposite to the actual one.

[12] Martin *v.* Smith, 5 Binn. (Pa.) 16.

[13] Vreeland *v.* Van Ryper, 17 N. J. Eq. 133.

[14] Phelps *v.* Jepson, 1 Root (Conn.) 48.

[15] Decamp *v.* Hall, 42 Vt. 483; Farr *v.* Trustees of Grand Lodge, etc., 83 Wis. 446.

[16] *Cf.* Birdseye Rev. Stat. (N. Y.) 3023. This is the most common form of legislation on the subject.

[17] *Cf.* Virginia Code, § 2430. The earliest of such statutes was doubtless that of the Plymouth Colony passed in 1643. See Plymouth Colony Laws, ed. 1836, 75.

[18] *Cf.* Georgia Code, § 3142. In jurisdictions of this type an attempted joint tenancy is declared a tenancy in common.

[1] See Saunders' Case, 5 Coke 12 a, 12 b.